

<p align="center"><b>STATE OF MONTANA</b></p> <p align="center"><b>COMPLIANCE SUPPLEMENT FOR AUDITS OF</b></p> <p align="center"><b>LOCAL GOVERNMENT ENTITIES</b></p>	REF: C/T-10
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<b>PROGRAM/SUBJECT:     Cities and Towns - Property Taxes</b>	

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**COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

(Note: Compliance requirements relating to property tax levy limits for individual funds and for the city or town in total are contained in the compliance supplement on budgets (C/T-2 - Cities and Towns - Budgets))

**COLLECTION OF TAXES/TAX NOTICES:**

**1.    Compliance Requirements:**

- Except in first, second, and third class cities that provide by ordinance for the city treasurer to collect the taxes, the county treasurer of each county shall collect the taxes levied by all cities and towns in the respective county. (MCA 7-6-4406 and 7-6-4413)
  
- In every city or town which shall provide by ordinance for the collection of its taxes by its city treasurer or town clerk, the city treasurer or town clerk shall collect all special assessments and taxes levied and assessed in accordance with the provisions of Title 7, Chapter 12, Parts 41 and 42, MCA. (MCA 7-12-4182)
  
- In any city or town where taxes are certified to and collected by the county treasurer in accordance with the provisions of MCA 15-16-101 and 7-6-4423, the city or town may, nevertheless, provide by ordinance for the collection by its city treasurer or town clerk of all special assessments and tax levied and assessed in accordance with the provisions of Title 7, Chapter 12, Parts 41 and 42, MCA. (MCA 7-12-4183)

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## COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

### COLLECTION OF TAXES/TAX NOTICES - continued:

#### 1. Compliance Requirements - continued:

- The governing body shall fix the tax levy for each taxing jurisdiction within the municipality:
  - a. by the later of the second Monday in August or within 45 calendar days after receiving certified taxable values;
  - b. after the approval and adoption of the final budget; and
  - c. at levels that will balance the budgets as provided in 7-6-4034.

Each levy:

- a. must be made in the manner provided by 15-10-201; and
- b. except for a judgment levy under 2-9-316 or 7-6-4015, is subject to 15-10-420.

(MCA 7-6-4036)

- Except as provided in MCA 7-12-4183, in each city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer immediately after the second Monday of August of each year, it is the duty of the city treasurer or town clerk to certify to the Department of Revenue, at the same time that the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk, all special assessments and taxes levied and assessed in accordance with any of the provisions of Title 7, Chapter 12, Parts 41 and 42, MCA. The Department of Revenue shall enter the special assessments and taxes upon the property tax record for the county. The county treasurer shall collect all taxes and assessments in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected. (MCA 7-12-4181)

- The city or town shall, upon request of the county treasurer, provide an itemized listing of all city services and special improvement district assessments to be collected. This listing shall be ready for mailing. The information on the list is included in the county treasurer's mailing to the last-known address of each taxpayer, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for prior years. (MCA 15-16-101)

- MCA 15-16-101 and 15-16-118, require that the tax notices mailed to each taxpayer by the county treasurer should include the following:
  - a. the amount of taxes and assessments owed for the current year,
  - b. the amount of taxes and assessments due and delinquent for other years,
  - c. the taxable value of the property,
  - d. the total mill levy applied to that taxable property,
  - e. itemized city services and special improvement district assessments collected by the county,

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **COLLECTION OF TAXES/TAX NOTICES - continued:**

#### **1. Compliance Requirements - continued:**

- f. the number of the school district in which the property is located,
  - g. the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax, and
  - h. notification of the \$5 minimum tax requirement, if applicable (MCA 15-16-118). (MCA 15-16-101 and 15-16-118)
- If the property is the subject of a tax lien sale for which a tax sale certificate has been issued under 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax sale and the taxpayer may contact the county treasurer for complete information. (MCA 15-16-101)
- There does not appear to be any specific statutory guidance regarding the content of tax notices mailed by a municipality; however, it would seem reasonable that they contain the information listed above, so far as it is applicable. For example, information relating to county, state, school district, and other taxing districts would not be applicable.

#### **Suggested Audit Procedures:**

- Determine whether the county treasurer is collecting all taxes and special assessments for the city or town, or whether the city or town has adopted an ordinance providing for the city treasurer or town clerk to collect its taxes and special assessments, or providing for the city treasurer or town clerk to collect its special assessments only, as provided by the above referenced statutes.
- Determine that the city or town council or commission has adopted the required resolution establishing the tax levies to be assessed for the year.
- If the city or town taxes are to be collected by the county treasurer, determine that the city treasurer or town clerk certified to the county a copy of the city or town resolution establishing the tax levies to be assessed, and certified to the Department of Revenue all special assessments and taxes levied and assessed in accordance with any of the provisions of Title 7, Chapter 12, Parts 41 and 42, MCA.
- If requested by the county treasurer, determine that the city or town provided the treasurer with an itemized listing of all city services and special improvement district assessments to be collected.
- If the city or town is collecting its own taxes, review selected tax notices to determine that they include all required information.

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **SPECIAL ASSESSMENT DUE DATES:**

#### **2. Compliance Requirements:**

- Special assessments require payment as follows, except as explained in the note below: (MCA 7-12-4181, 7-12-4188 and 15-16-103)
  - a. One-half the payment on or before November 30
  - b. One-half the payment on or before May 31.

**(Note:** Prior to March 20, 1979, all assessments were payable in one payment due prior to November 30. Effective on that date, cities and towns could, at their option, provide by resolution that 2 of the payment could be deferred until May 31. Effective April 30, 1985, MCA 7-12-4188, was amended to require assessments to be paid in two equal installments, one due by November 30, and one due by May 31. Also, effective April 27, 1987, MCA 7-12-4190, was amended to require that the assessments be paid in semiannual installments. All bond issues dated prior to March 20, 1979, and many issues dated from March 20, 1979 through April 30, 1985, were set up with a single annual payment of principal and interest. The time of the payment was established based on a single November assessment payment. Therefore, for certain S.I.D. debt service funds, the assessments may still be collected entirely in November because of the required time for the principal and interest payment. There should be very few of these left outstanding.)

- Property tax payments deposited in the United States mail on or before payment deadlines, as shown by the postmark on the envelope received by the Treasurer's office, are considered timely paid irrespective of the date upon which such payment is actually received by the County Treasurer. (AGO # 12, Vol. 40) Although this AGO. is related to tax collections received by a county treasurer, it appears that the same would apply to a city or town that is collecting its own taxes and assessments or assessments.

#### **Suggested Audit Procedures:**

- If the city or town is collecting its own taxes and assessments or assessments only, review selected billing notices to determine if the special assessments were due on the dates specified above.
- If the county treasurer is collecting the special assessments for the city or town, review selected remittances from the county treasurer to the city treasurer or town clerk to determine if they were paid on the dates specified above.

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **MOBILE HOME, MANUFACTURED HOME, AND HOUSETRAILER TAX DUE: DATES:**

#### **3. Compliance Requirement:**

- Taxes on mobile homes, manufactured homes, and housetrailers not taxed as an improvement (taxed as personal property) are due as follows: the first payment is due on or before May 31 or within 30 days from the date of the tax notice, whichever is later; and the second payment is due no later than November 30 of the year in which the property is assessed. (MCA 15-24-202)

**(Note:** For property owners in military service who are serving outside of Montana or who are hospitalized as specified in MCA 10-1-606, the collection of all taxes must be suspended until 1 year after the cessation of hostilities or 1 year after the taxpayer is released from active duty, or 1 year after the taxpayer's release from the hospitalization.)

#### **Suggested Audit Procedure:**

- If a city has provided by ordinance for the collection of its taxes by its treasurer, review selected tax notices for mobile homes, manufactured homes, and housetrailers not taxed as an improvement and determine if the taxes were payable as stated above.

### **PENALTY FOR DELINQUENCIES:**

#### **4. Compliance Requirements:**

- Interest on delinquent real and personal property taxes must be charged at a rate of 5/6 of 1% per month. A 2% penalty will also be added to the delinquent taxes. (MCA 15-16-102)
- Interest on delinquent taxes on mobile homes, housetrailers and, manufactured homes, that are not taxed as an improvement must be charged at a rate of 5/6 of 1% per month. A 2% penalty will also be added to the delinquent taxes. If a mobile home is moved and the taxes have not been paid in full, there will be an additional penalty of 20% or \$50, whichever is greater. (MCA 15-24-202 and 15-16-102)

**(Note:** For property owners in military service who are serving outside of Montana or who are hospitalized as specified in MCA 10-1-606, penalties or interest on delinquent taxes may not accrue until 1 year after the cessation of hostilities or 1 year after the taxpayer is released from active duty, or 1 year after the taxpayer's release from the hospitalization.)

- Interest on delinquent special assessments must be charged at a rate of 5/6 of 1% a month. A 2% penalty will also be added to the delinquent taxes. (MCA 7-12-4188 and 15-16-102)

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **PENALTY FOR DELINQUENCIES - continued:**

#### **4. Compliance Requirements - continued:**

- The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city or town council. A copy of the resolution must be certified to the county treasurer. (MCA 15-16-102(6) and 15-16-103)
- One-half of the taxes are due on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, one-half are payable on or before 5 p.m. on May 31 of each year. If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with MCA 1-1-307. (MCA 15-16-102)
- If taxes on property qualifying under the low-income property tax assistance provisions of MCA 15-6-134(1)(c) and 15-6-191 are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due. (MCA 15-16-102)

#### **Suggested Audit Procedures:**

- If a city has provided by ordinance for the collection of its taxes or assessments by its treasurer, as part of testing of property tax and assessment revenue, test selected interest and penalties on delinquent taxes and assessments to determine if the rates are charged as stated above.
- If the county treasurer is collecting property taxes or assessments for the city or town, as part of testing of property tax and assessment remittances from the county treasurer, determine that the city or town is receiving interest and penalties on delinquent taxes and assessments collected and remitted by the county treasurer.
- If the county treasurer is collecting property taxes or assessments for the city or town, determine if there was any property qualifying under the low-income property tax assistance provisions. If so, verify that any penalty and interest on late payments were in accordance with the provisions specified above.
- Determine whether the city or town council waived any penalty and interest charges on delinquent assessment payments. If so, determine that a copy of the resolution was certified to the county treasurer.

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **RECEIPT OF PAYMENT:**

#### **5.    Compliance Requirement:**

- Although MCA 15-16-104, refers to the duties of the county treasurer as it relates to the collection of any tax, it would be appropriate for a municipality that has provided by ordinance for the collection of its taxes or assessments by its treasurer to follow the procedures set out in that statute. MCA 15-16-104 provides that the county treasurer must note the date and the amount of the payment of any tax in the property tax record and issue a receipt to the person paying the tax. If, however, the payment is received through the mail or by any electronic means, the treasurer shall issue a receipt only on request of the person paying the tax. (MCA 7-6-4402, 7-6-4403, 7-6-4404, and 15-16-104)

#### **Suggested Audit Procedure:**

- Review the treasurer's property tax records to determine if the dates and amounts of all tax and assessment payments are recorded.

### **PAYMENT OF DELINQUENT ASSESSMENT AND REINSTATEMENT:**

#### **6.    Compliance Requirement:**

- Whenever any special assessment or installment is delinquent, is declared to be delinquent by appropriate resolution of the city or town council, and is certified to the county clerk and county treasurer for collection as provided in Title 7, Chapter 12, Part 41, MCA, the city or town council may, nevertheless, at its option, by appropriate resolution, order the delinquent assessment to be withdrawn from the county treasurer, canceled from the county treasurer's records and proceedings, and reinstated in the office of the city treasurer and on the property tax record upon the payment to the city treasurer of the assessment or the installment and interest up to date. (MCA 7-12-4184)

#### **Suggested Audit Procedure:**

- If the city or town collects its own special assessments, and delinquent assessments certified to the county have been withdrawn from the county and canceled from the county's records and reinstated on the city's or town's records, test selected delinquent tax assessment payments to determine that the procedures described above were followed.

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **CERTIFIED SPECIAL ASSESSMENTS TO COUNTY:**

#### **7. Compliance Requirement:**

- In a city or town that collects its own taxes or special assessments when any taxes or assessments become delinquent, a tax lien sale may not be held by the city or town unless the city treasurer or town clerk, within 10 working days after the date on which the taxes or assessment become delinquent, certifies the delinquency to the county treasurer. The certificate must contain the following: the description of each lot or parcel of land on which any tax or assessment has become delinquent; the name and address of the person taxed or assessed; the date when the tax or assessment became delinquent; the amount of the delinquent tax or assessment, and the penalty to be added, if any. (MCA 7-6-4423 and 7-12-4183)

#### **Suggested Audit Procedure:**

- If the city or town collects its own taxes or special assessments, determine that the delinquent taxes and assessments were certified to the county treasurer within 10 working days after the date on which the taxes or assessment become delinquent.

### **COUNTY TREASURERS REMITTANCE TO MUNICIPALITIES:**

#### **8. Compliance Requirements:**

- The county treasurer must within a reasonable time after collection compute the amount of taxes due to cities and towns in the county and pay it to the proper custodian of funds. The lapse of one month after collection of the bulk of the city or town taxes is not a reasonable time within which to perform that duty. (MCA 7-6-4413) (Cut Bank v. McNamer, 62 Mont. 490, 205 P. 951 (1922))
- When remitting taxes to a city or town, the county treasurer must break out the amount received from taxpayers as payment for the city's special improvement district assessments. (AGO #48, Vol. 43)
- Unless a statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax. Therefore, local government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the county treasurer. (AGO #25, Vol. 41))

#### **Suggested Audit Procedures:**

- Test the dates of selected remittances from the county treasurer to the city or town to determine that they were made on a timely basis.

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## **COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:**

### **COUNTY TREASURERS REMITTANCE TO MUNICIPALITIES - continued:**

#### **Suggested Audit Procedures - continued:**

- Test selected remittances from the county treasurer to the city or town and determine that the remittance breaks out the amount received from taxpayers as payment for the various special improvement districts.
- If applicable, determine that the remittances from the county treasurer include interest and penalties collected on delinquent property taxes.

### **PROTESTED TAXES:**

#### **9. Compliance Requirement:**

- The person upon whom a property tax or fee is being imposed under Title 15, Chapter 1, Part 4, MCA, may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must: (a) be made to the officer designated and authorized to collect it; (b) specify the grounds of protest; and (c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under MCA 15-7-111. (MCA 15-1-402(1))

#### **Suggested Audit Procedures:**

- Test selected receipts of taxes and fees paid under protest to determine if they were accompanied by written notice as specified above.
- Verify that the protested tax or fee payment did not exceed the amount specified above.

#### **10. Compliance Requirement:**

- All property taxes and fees paid under protest to a city or town must be deposited to a special protested tax fund (agency fund) and remain in the protested tax fund until final determination of any action or suit to recover the taxes, unless they are released at the request of the city or town pursuant to the provisions of MCA 15-1-402(5). (MCA 15-1-402(4)) A subsidiary record should be kept for each taxpayer.

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## COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

### **PROTESTED TAXES - continued:**

#### **Suggested Audit Procedure:**

- If the city or town collects its own taxes, test selected receipts of taxes and fees paid under protest to determine that they are recorded in a special protested tax fund and retained in that fund until final action or until released as provided by statute, and that subsidiary records are kept for each taxpayer.

### **11. Compliance Requirements:**

- The governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except for the first-year protest amount. (MCA 15-1-402(5)(a))
- **The following applies retroactively to any tax appeal or tax paid under protest after October 31, 2000,** – The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled. (MCA 15-1-402(5)(b))

#### **Suggested Audit Procedures:**

- Determine whether the governing body of the city or town affected by the payment of taxes under protest that remains unresolved have demanded that the county treasurer pay the city or town all or a portion of the protest taxes to which it is entitled.
- If so, determine that the compliance requirements noted above relating to the years of protest subject to such a demand have been adhered to.

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## COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

### **PROTESTED TAXES - continued:**

#### **12. Compliance Requirement:**

- If a protested tax action is determined in favor of the protestor, the treasurer must refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest. The interest paid shall be at the rate of interest earned by the pooled investment fund provided for in MCA 17-6-203, for the applicable period. (MCA 15-1-402(6)(b))  
(**Note:** The city or town treasurer is not responsible for the amount required to be refunded by the state treasurer. The Department of Revenue shall refund the amount of protested taxes and interest to the tax protester as required by MCA 15-1-402(6)(b). (MCA 15-1-402(6)(d)))
- If the Department of Revenue revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed. (MCA 15-1-402(8))

#### **Suggested Audit Procedure:**

- If the city or town collects its own taxes, compare the amount of selected protested tax payments from the protested tax fund to the certified copy of the final judgment from the state tax appeal board or court. Calculate the interest that was paid on the amount refunded to determine if the rate paid was paid as provided for above.
- If the refund was caused by a revised assessment then determine that no refund of taxes was given if it was for \$5 or less.

#### **13. Compliance Requirements:**

- If an action regarding protested taxes that is brought before the county or state tax appeal board or the district court does not begin within the time specified (90 days of the date of the tax notice per MCA 15-1-406(2)) or if the action is determined in favor of the government, the amount of the protested portions of the property tax or fee must be taken from the protest fund and deposited to the credit of the fund or funds to which the tax belongs. (MCA 15-1-402(6)(a))

#### **Suggested Audit Procedures:**

- If the city or town collects its own taxes, test protested taxes remaining in the protest fund and determine that 90 days since the date of the notice has not elapsed without the protestor taking action, or if action has been taken, that there has been no final action ordered by the state tax appeal board or a court.
- If the city or town collects its own taxes, test the distribution of protested taxes to determine if they were distributed to the fund or funds to which the tax belongs.